



### METHODS FOR MANAGING PRISON GROWTH

#### SUMMARY

Prison overcrowding has been problematic in New Mexico for more than two decades. The most significant change in prison operations during this period has been the shift from correctional facilities operated solely by the public sector to a split between publicly and privately operated facilities. Private operations offer alternative inmate housing in some areas of the state; yet, the demand continues for more prison capacity. Policymakers have responded by appropriating funds for prison construction and operations and by establishing mechanisms to manage prison growth. This bulletin discusses both prison population growth in New Mexico and some strategies available for managing this population growth.

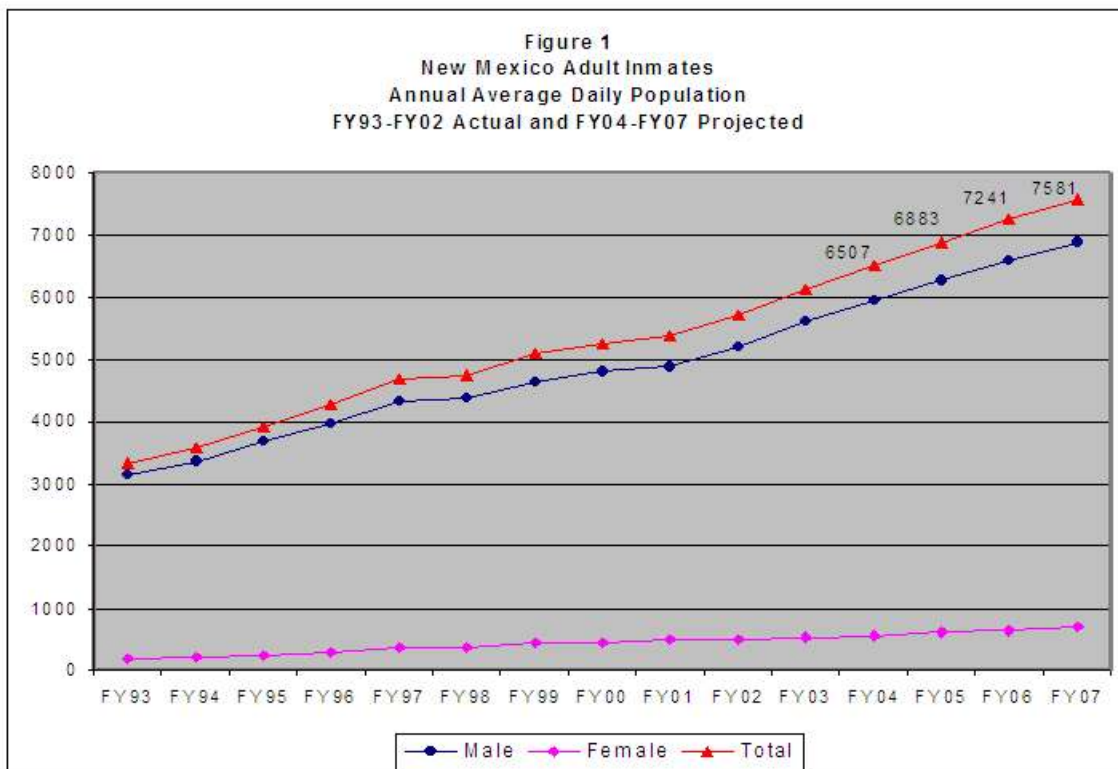
#### PRISON POPULATION GROWTH

New Mexicans have witnessed a trend in corrections policymaking that has focused on ways to make offenders accountable for the crimes they commit. Many states, including New Mexico, have instituted laws such as

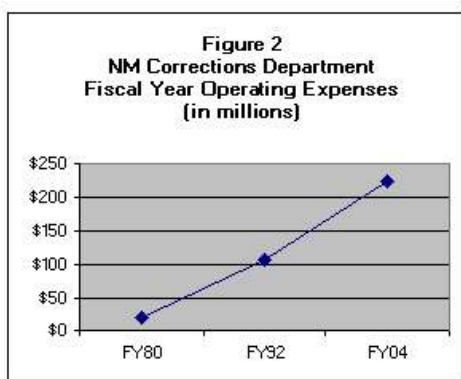
determinate sentencing, mandatory sentencing, truth in sentencing (limited good time), habitual offender sentencing and reductions in parole time. Offenders are serving longer sentences, contributing to the rise in prison populations. In the past decade, both New Mexico's adult prison population, as well as the operating expenses for the New Mexico Corrections Department (NMCD), have doubled. (See Figures 1 and 2.)

Actual expenditures for NMCD operations have grown from \$20 million for the fiscal year (FY) in which the 1980 penitentiary riot occurred to \$223 million for the current — FY04 — operating budget. NMCD predicts a \$5-\$6 million budget shortfall this fiscal year. Historically, growth in corrections expenditures has resulted from inflation and an increasing number of inmates (Schmelz, 1995). The expenditures for operating both correctional facilities and parole services are expected to increase even more, if alternatives are not implemented to slow the growth rate.

While the largest state prison systems (e.g., Texas, California and New York) are seeing a decline in their prison



Data Source: NMCD web site January 31, 2003 and March 24, 2003.



Source: Executive Budget Recommendations.

populations, New Mexico is not (Harrison, 2003). A fluctuating five to six percent average annual daily prison population increase is projected for the NMCD inmate population, suggesting that the number of male and female adult inmates will reach 6,507 in FY04 and 7,581 by FY07 (Legislative Finance Committee (LFC) Report, 2003). Prison capacity is insufficient to address these projections.

*NMCD capacity figures indicate the number of inmates that the facilities (state and contracted) can currently house, excluding disciplinary/management beds.*

The female inmate population in New Mexico is considerably smaller than its male counterpart and experiences more fluctuation in its incarceration rate. Although it has risen the past two decades, current projection techniques cannot be applied accurately to this population. The University of New Mexico's (UNM) Institute for Social Research cites three factors hindering accurate projections for the female inmate population: its small size, its inconsistent population trends over the last 10 years; and the lack of information on determinants of the female inmate population (UNM, 1997).

During the 2002 legislative session, the legislature passed Senate Joint Memorial 48 (SJM 48), which requested the establishment of a task force to study issues regarding the incarceration of female inmates. Mandatory sentencing laws and imprisonment of nonviolent offenders most seriously affect the female inmate population because a majority of the females are nonviolent drug offenders. The task force concluded that female inmate needs must be adequately assessed and linked to gender-specific programming (SJM 48, 2002). In June 2003, the New Mexico female inmate population reached 565.

Future growth of inmate populations will depend upon policy choices. Sentencing laws are major contributing factors to this growth nationally. George Washington University, whose prison population projections are used by the NMCD, suggests that truth in sentencing laws (e.g., reduced good time

provisions) are the major contributor to prison population growth in this state. Consequently, a 2003 status report from the NMCD stresses the need for a "balanced system" for offenders, placing them "in the most cost-efficient and effective custody to reduce recidivism" (NMCD Status Report, 2003). The department reports that it will "use the existing prison bed inventory for violent and habitual offenders and use alternative sanctions for non-violent offenders".

#### QUICK FACTS

In February 2003, the New Mexico prison system was exceeding capacity by 133 inmates; for FY04, both state and privately operated facilities are projecting shortages in capacity.

Between 120 and 135 inmates are serving parole time in prison, due partly to a lack of approved parole plans and court-ordered treatment requirements.

The female inmate average daily population has a faster growth rate than its male counterpart. It peaked in fiscal years 1995 and 1996, slowed to less than a one-half percent increase in FY02 and is projected to increase 6.8 percent in FY04 (NMCD web site, March 2003).

Under truth in sentencing laws, New Mexico inmates serve 75-80 percent of their sentences; whereas, under the former good time provisions, 55-60 percent of sentences were served (NMCD, July 2003).

#### CHANGES IN SENTENCING LAWS

Sentencing policy changes in the 1980s and 1990s, which were gaining wide support both in New Mexico and nationally, contributed to faster-growing prison populations. The changes included mandatory prison sentences for selected crimes (including drug offenses), longer sentences for some offenses and limitations on the early release of inmates. By the late 1990s, states responded to prison overcrowding by repealing mandatory minimum sentencing at an unprecedented rate. Some states repealed mandatory minimum sentencing for nonviolent offenders and amended truth in sentencing statutes by making certain offenders eligible for parole after serving a quarter of their sentences (Seigel, 2001).

#### PUBLIC VERSUS PRIVATE PRISONS

One solution for addressing New Mexico's prison population growth has been to expand capacity through privately operated prisons. In 1984, the New Mexico Legislature authorized privately operated *jails* on a pilot basis (Section 33-3-26 NMSA 1978). By 1985, the authorization had been expanded to state minimum security *prison facilities* (Laws 1985, Chapter 149). The women's facility in Grants was the first privately constructed and operated state prison facility, which

opened in June 1989. New Mexico's privately operated prisons generally house level 3 or medium security inmates, whereas public prisons house the remainder, including the higher security level offenders.

By midyear 2002, New Mexico reported that 43 percent of its inmates were being housed in privately operated facilities (Harrison, 2003). Currently, there are three companies operating five facilities that house state inmates in different New Mexico locations: Hobbs (Lea County), Santa Rosa (Guadalupe County), Estancia (Torrance County), Santa Fe (Santa Fe County) and the women's facility in Grants (Cibola County).

For FY04, the legislature appropriated \$51 million to pay for housing inmates in privately operated facilities (Laws 2003, Chapter 76). Proponents of private facilities suggest that private facilities generate up to 20 percent in cost savings for the states. Conclusions reached in a 2001 Bureau of Justice Assistance study indicate that the savings realized by using private facilities is only about one percent less than using state-run facilities (Austin, 2001). There is evidence of private companies constructing new facilities faster and cheaper than the public sector (Austin, 2001).

### ALTERNATIVES TO INCARCERATION

By midyear 2002 and for the first time in history, the nation's prison and jail population exceeded two million (Harrison, 2003). With budgets under pressure and the states facing deficits, alternatives to incarceration are being revisited.

Because the country's prisons are overcrowded with nonviolent offenders, *early release* of these offenders provides relief while still making offenders accountable for their offenses. In recent years, some states have shifted to using alternatives like early parole, drug treatment and rehabilitation, community corrections, reintegration programs and combinations of these approaches.

Some initiatives implemented by other states to address prison population growth include Tennessee's "*pay-as-you-go*" policy requiring that any law enacted to increase the length of imprisonment for offenses must be accompanied by an appropriation equal to the cost of the increase (Schmelz, 1995). North Carolina instituted a *cap on the number of prisoners* the state could house at any one time. While the prison population appears low, the number of people moving through the system is high.

The incarceration of nonviolent drug offenders has added to the growth problem. As a result, *substance abuse treatment* programs have gained widespread support as a nonprison alternative (*e.g., diversion or early release*) for these offenders. Arizona and California instituted voter initiatives that impose treatment versus imprisonment for first- and some

second-time drug offenders (National Conference of State Legislatures (NCSL), 2003). In 1996, Arizona voters passed Proposition 200, making first- and second-time drug offenders eligible for probation upon individual participation in approved treatment or education programs. Prison costs of \$6.7 million were avoided in FY99 as a result of the probation rather than prison time given to qualified offenders (NCSL, 2003). In 2000, under Proposition 36, California allocated \$120 million to drug treatment programs annually. The Legislative Analysts' Office in California estimated the savings to be \$200-\$250 million for prison operations. In 2001, Oregon passed Senate Bill 914 providing treatment for persons pleading guilty to possession or certain property crimes. With successful completion of the program, charges are dropped; otherwise, the judge can impose prison time.

States are also focusing on *early parole*, which is considered a feasible alternative to incarceration and may reduce both prison populations and costs. The NMCD is considering the possibility of *altering parole policies* to reduce and control New Mexico's prison population. Currently, there are inmates serving parole time in prison because they do not have approved parole plans. Many parole plans are denied when court-ordered treatment plans cannot be met. Suggestions for change include the enhancement of the parole board's discretion to release "in-house" parolees (LFC Report, 2003). Another suggestion is to evaluate technical parole violations to determine if there are feasible policy changes that would result in fewer recidivists. Some states bring technical parole violators, who do not have new criminal offenses, back to prison and have them evaluated by a team of caseworkers. An attempt is made to find a solution to stop or reduce these violations. A third strategy is to *parole more offenders with certain medical conditions or at certain ages*. Although the parole board has such authority, the NMCD has rarely requested its use (LFC Report, 2003).

Inmate reintegration programs allow offenders to be released under intensive supervision one year before the end of their sentences. State policymakers have been hesitant to implement either early parole or reintegration programs, which ceased in 1996 when two participants were arrested and convicted of killing five people during an armed robbery. At that time, 107 offenders were taking part in reintegration programs.

The current administration is reassessing these alternatives and considering a *more intensive screening process* before implementation of an early release program.

### NEW MEXICO SENTENCING COMMISSION

Effective July 1, 2003, Laws 2003, Chapter 75 created the New Mexico Sentencing Commission (NMSC) to succeed its predecessors: the Criminal and Juvenile Justice Coordinating

Council, created in 1994 (Sections 9-3-10 to 9-3-10.2 NMSA 1978) and its predecessor, the Criminal Justice Coordinating Council, established in Laws 1977, Chapter 257.

The duties of the NMSC are more challenging than those of its predecessors. First, it is charged with assessing the impact of any enacted sentencing guidelines on correctional resources and programs and reporting that information to the legislature, along with estimates of the impact of proposed legislation on prison populations. **The NMSC is charged with developing proposed sentencing reforms and presenting proposed legislation to the appropriate legislative interim committee for review;** and third, it is charged with reviewing and assessing the merits of proposed legislation that creates new criminal offenses, changes the classification of offenses or changes the punishment for offenses.

### CORRECTIONS POPULATION CONTROL COMMISSION

The Corrections Population Control Act (Laws 2002, Chapter 8) established the Corrections Population Control Commission (CPCC) in response to concerns that prison growth in New Mexico might exceed the adult institutional rate capacities. The secretary of corrections is the designated chairman of the seven-member commission, composed of six other public officials and private citizens appointed by leadership from each branch of government.

The commission's charge is to "operate as an autonomous, nonpartisan body" and to "study, develop and recommend policies and mechanisms designed to manage the growth of the inmate population" (Sections 33-2A-2 and 33-2A-5 NMSA 1978). In order to do this, **the CPCC is required to review prison population forecasting models and the impacts of changes in sentencing policies; to analyze the need for additional facility construction; to submit proposed legislation for its recommendations, as needed; and to submit an annual report to the interim committee addressing corrections issues** (Section 33-2A-5 NMSA 1978).

The governor may order the commission to convene (or the commission may order itself to convene by a two-thirds' vote by members who are appointed) at any time to consider the release of nonviolent offenders who are within 180 days of their projected release date provided that the commission must comply with all provisions of the act, specifically those defining and limiting those nonviolent offenders eligible for consideration (Section 33-2A-7 NMSA 1978). Nonviolent offenders still must comply with the requirements for a parole plan, must not have committed a crime while incarcerated and must pass a drug test (Section 33-2A-6 NMSA 1978). **A nonviolent offender is defined in the act as a person convicted only of possession of a controlled substance for the original sentence or of use or possession of a controlled substance in violation of his parole plan for conviction of**

**a nonviolent offense; or an inmate designated by the CPCC as a nonviolent offender, provided that the offender was convicted of a nonviolent offense as designated by law** (Section 33-2A-3 NMSA 1978).

Although the commission met once in October 2002 to review a list of 141 nonviolent inmates who might be released early, a final authorization to release inmates was never approved, in part due to concerns about the use of reintegration programs. The commission has not met since.

A June 30, 2007 termination date is set for the commission, at which time the secretary of corrections assumes the duties of the CPCC.

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Laws 2003, Chapters 75 and 76

Chapter 9, Article 3 NMSA 1978 (10 to 10.2)

Chapter 33, Article 2A NMSA 1978 (2, 3, 5, 6, 7)

This document, written by Elizabeth Holmes and Roxanne Knight, contains excerpts from various sources, including presentations to the interim Corrections Oversight and Justice Committee. For more information, contact the Legislative Council Service at (505) 986-4600. This document does not represent a policy statement of the Legislative Council Service or its staff.  
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